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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,968	07/03/2001	Harjit Singh	7513.01439	9945

7590

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Kevin P. Crosby  
Brinkley, McNerney, Morgan Solomon & Tatum, LLP  
200 East Las Olas Blvd., Suite 1800  
New River Center  
Fort Lauderdale, FL 33301

EXAMINER
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WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

**Office Action Summary**

Application No.

09/898,968

Applicant(s)

SINGH, HARJIT

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al taken together with Connelly et al and Hu et al.

The claims stand rejected for the reasons set forth in the last Office Action (mailed 8/25/03) with the addition of the following which addresses new limitations to the instant claims.

The instant claims further call for the particular particle bulk density of the agglomerated product. Although Geiger et al is silent concerning same, it is known to employ powders including milk powders encompassing such bulk density values for use in a beverage dispensing apparatus as taught, for example, by Hu et al (e.g. col. 4, line 63 – col. 4, line 6). As such, absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such range of density values as taught by, for example, Hu et al in the milk powder of Geiger et al and to have arrived at a particular density value within the range used in the prior art as a matter of preference..

2. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geiger et al taken together with Connelly et al, Hu et al, and Fazio.

The claims stand rejected for the reasons set forth in the last Office Action (mailed 8/25/03) with the addition of the following which addresses new limitations to the instant claims.

3. Claims 12, 15, 18, 21, 24, 27, 30, 33, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in paragraph 1<sup>1</sup> or 2<sup>2</sup> and further in view of Lonergan (GB 2255703).

The claims further call for the particular moisture of the powder. However, such moisture level of 3.5% is known in the prior art as taught, for example, by Lonergan. Such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been obvious to same to have dried the product of Geiger et al to such level as a matter of preference.

4. Claims 13, 14, 16, 17, 19, 20, 22, 23, 25, 26, 28, 29, 31, 32, 34, 35, 38, and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record does not disclose nor teach preparing a particular natural milk agglomerated powder having a specific bulk density wherein same has a value of scorched particles mass as claimed.

5. Applicant's arguments filed 1/26/04 have been fully considered but they are not persuasive.

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<sup>1</sup> Regarding claims 12, 15, 18, 21, 24, 27, 30, and 33.

<sup>2</sup> Regarding claims 36 and 37.

An applicant argues that Fazio does not teach a natural dairy creamer having milk caseinates. The examiner disagrees. Fazio teaches the concept of dairy based creamers containing natural ingredients such as whole milk (e.g. col. 5, line 33-41) as well as milk caseinate (e.g. Example 1). Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention as a matter of preference to have employed same as an art recognized form of creamer in the vending process of Geiger et al.

All other arguments have been addressed in view of the rejections above.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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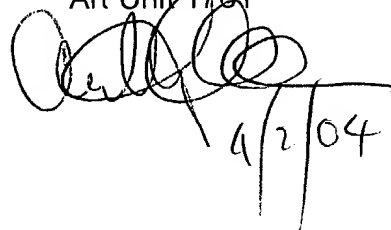
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
April 2, 2004

Anthony Weier  
Primary Examiner  
Art Unit 1761



4/2/04